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89-1291

Supreme Court, U.S.
FILED
MAR 13 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER Term, 1989

ATTA MOSHKELGOSHA, ET. AL.,

Petitioner,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Respondent.

ON A PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

SUPPLEMENTAL APPENDIX FOR PETITIONER

Atta Moshkelgosha
Pro se
9239 Greenwood Lane
Lanham, Maryland
80706

IN THE SUPREME COURT OF THE
UNITED STATES

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Petitioner,

v.

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SUPPLEMENTAL APPENDIX A

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SUPPLEMENTAL STATEMENT OF THE CASE

The record contained in the Supplemental Appendix, the original Appendix, and the Petition for Writ of Certiorari all reflect that Prince George's County, Maryland, has been Petitioner's adversary for at least five years. The Supplemental Appendix further reveals that Petitioner's counsel, employed by co-counsel, prepared Petitioner's Record Extract, Brief and Reply Brief <u>against</u> Prince George's County, Maryland, filed in the Court of Special Appeals of Maryland. The Supplemental Appendix also reflects that counsel for Petitioner was for at least two years prior thereto, employed by

Petitioner's adversary, Prince George's County, Maryland, as an Assistant Public Defender.

The record reflects that the interests of Prince George's County, Maryland and Petitioner were diametrically opposite; Petitioner seeking to upgrade and enrich the value of his property to commercial, and Prince George's County, Maryland, seeking to acquire Petitioner's property at the lowest possible value. Although facts of the entire scenario were known to both counsel, neither advised Petitioner of the serious conflict of interest; even though the conflict existed not only from the patent infraction of being employed by Prince George's County, Maryland, but from an even more serious aspect, economic and monetary, as well.

Petitioner had no knowledge of the conflict of interest until March 1990, long after his appeal was lost in the Court of Special Appeals of Maryland by the Assistant Public Defender and his co-counsel. But for the fortuitous circumstance of being in Court when Petitioner's counsel identified himself as an Assistant Public Defender, the secret might have gone undetected forever.

The Supplemental Appendix reveals additional evidence corroborating the fact that Prince George's County, Maryland, and several of its Agencies have been interested in acquiring Petitioner's property since 1984, and that the interest continued during Petitioner's litigation through the Agencies and Courts of Maryland, that

interest in acquiring Petitioner's property continues presently through condemnation proceedings, and as demonstrated by communications as late as June and August, 1989.

The Supplemental Appendix further supplement the record corroborating the fact that a prior attorney had manifested an interest in acquiring one-third of Petitioner's property, after having contracted for a fee agreement. At no time did counsel for Petitioner advise the Court of their conflict of interest; nor did they advise the Court of another attorney's effort to acquire a substantial portion of Petitioner's property.

SUPPLEMENTAL ARGUMENT IN FAVOR OF GRANTING WRIT

The attorney-client relationship imposed upon both counsel who represented Petitioner in the Court of Special Appeals of Maryland fiduciary obligations to represent Petitioner, inter alia with "undivided loyalty." This precluded counsel from representing Petitioner and Prince George's County with competing interests.

Both counsel for Petitioner were under a duty to disclose that appellate counsel who compiled the Extract of Record, prepared the Brief, the Reply Brief, and argued the case in the Court of Special Appeals of Maryland was an Assistant Public Defender, an employee of Prince George's County, Maryland.

This rule is as "old as the hills" 1880. See Baker v. Humphrey, 101 U.S. 494 (1880), and more recently Westinghouse Elec. Corp. v. Kerr-McGee Corp., 580 F. 2d, 311 (7th Cir. 1978), cert. denied, 439 U.S. 955.

The State of Maryland has observed the same rule, almost as long ago as the Federal system. See Merryman v. Euler, 59 Md. 588 (1882) 1; and subsequently Hughes v. McDaniel, 202 Md. 626, 98 A.2d 1 (1953). For a comprehensive study, see Mallen, Legal Malpractice, Ch. 7, 2nd ed. pp. 208-237 (1981).

Counsel for Petitioner not only had a duty to disclose his employment with Prince George's County, but his salary, as well as his length of tenure. In the absence of this disclosure, counsel are guilty of "constructive fraud." Baker v.

Humphrey, supra. This failure to disclose deprived Petitioner of his options: 1) the right to refuse to employ counsel; 2) the right to fire or discharge counsel; and 3) the right to obtain counsel not on the payroll of Respondent. Counsel failed to disclose inter alia, "an adverse interest of a prior client, or a conflict interest of another client." (Footnote omitted) Mallen, supra, p. 219. Hence, Petitioner was betrayed by his counsel.

Moreover, counsel for Petitioner were precluded from representing Prince George's County, on one hand, and Petitioner on a second-subsequent client on the other, by a maxim that has existed almost since time immemorial, "no man shall serve two masters." See Jeffrey v.

Pounds, 67 Cal. App.3d 6, 136 Cal. Rpr. 373 (1977), Mallen, Conflicting Interest, supra., ch. 8, p. 238.

Whatever differing connotations emerge from the doctrine of conflicting interest, there can be no question counsel can not, simultaneously, represent a first "master," Prince George's County, Maryland, Respondent, and a second subsequent "master," Petitioner, who has sued Respondent. Petitioner and Respondent possess diametrically opposing interests. Counsel can not be on the payroll of one and representing the other.

The Appendix, Supplemental Appendix, and total record reflect Petitioner's record in the Agencies as well as in the Courts, is not as good as it ought to have been. Counsel's Briefs in the Court

of Special Appeals of Maryland failed to highlight that Prince George's County, Maryland, for whom he worked, was seeking to obtain Petitioner's property at a lower economic value, while Petitioner was litigating to increase the value of his property to commercial. Similarly, counsel for Petitioner failed to highlight that another attorney had sought to acquire an interest in Petitioner's property. All of these relevant facts were available and should have been squarely put before the Court of Special Appeals of Maryland. Perhaps, it is too much to expect counsel to advise the Court of his conflict of interest in Petitioner's Brief.

This actual conflict of interest is not allowed in the face of a "client's loss of confidence," not to mention loss

of his best representation. Jeffrey v. Pounds, supra. See Mallen, supra., ch. 8, §151, p. 243.

What is stated respecting the role of the Court in Mallen, supra, is equally apposite here:

> A court occupies a central position in investigating and reviewing ethical conduct which could affect the integrity of the profession. A judge not only has supervisory authority over the ethical conduct of attorneys appearing before it, but also an independent obligation to assure proper ethical conduct. The supervisory responsibility is such that the court should act upon its own motion if it observes what appears to be the representation of conflicting interests. In fact, even appellate courts in remanding a case for new trial have disqualified counsel from continuing to represent multiple

parties in the new trial, or have remanded that issue to the trial court to decide.

Mallen, continued and offered a solution, Id.

> Where necessary, the court should conduct an evidentiary hearing or factual inquiry to determine whether disqualification is appropriate. It has been suggested that the proceedings should be in camera. The court should inquire into the nature of the conflicts, the client's awareness of the conflicts, and their desire and need for separate counsel. The court should resolve issues of credibility and decide the ultimate facts in dispute. A record of the proceedings should be made for appellate review.

The court should also determine whether there has been a waiver of the conflict, whether the waiver was effective or whether a waiver was possible. In so doing,

> the court must consider the Canon 9 proscription against the appearance of impropriety, as well as public policy considerations which may be manifest.

Thereafter, Mallen, necessarily excluding the participation of offending counsel, thusly add:

> Finally, the court should determine the appropriate remedy, a function which cannot be delegated to counsel.

(Footnotes omitted, italics supplied). See Wood v. Georgia, ____ U.S. ____, 101 S.Ct. 1097 (1981).

From the foregoing, the conclusion is inescapable, counsel for Petitioner violated Petitioner's right against "conflict of interest" By so doing, Counsel for Petitioner denied Petitioner

his right to due process, and equal protection. The law has fashioned a remedy for this. It is appropriate here.

CONCLUSION

In view of the Petition for Writ of Certiorari, the Supplemental Petition, the Appendix, the Supplemental Appendix, and the record in toto, it is respectfully submitted that Petitioner's Petition and Supplemental Petition for Writ of Certiorari be granted.

Respectfully submitted.

Atta Moshkelgosha

Atta Moshkelgosha
Pro se
9239 Greenwood Lane
Lanham, Maryland
20706

CERTIFICATE OF SERVICE

I hereby certify that 3 copies of the Supplemental Petition for Writ of Certiorari were mailed postage prepaid this 12th day of March, 1990 to: Joyce Birkel Hope, Esq., County Administrtion Building, Upper Marlboro, MD 20772.

Atta Moshkelgosha

Atta Moshkelgosha

SUPPLEMENTAL APPENDIX B

March 30, 1987 Fee Agreement from Gerard T. McDonough 35

December 26, 1986 ltr from Robert M. Arciprete re interest in purchasing property 38

April 25, 1986 ltr from Jeffrey L. Miller, re interest in property. 40

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July 30, 1985 ltr from Water Resources Admin. re intent to issue permit 46

May 24, 1984 ltr from Mr. Amonett re interest in Old Marlboro Raceway 49

A F F I D A V I T

This is to certify, under penalty of perjury that:

1. On or about March 6, 1990, Benjamin J. Woolery, Esquire identified himself in "open court of the Circuit Court of Prince George's County, as an Assistant Public Defender.

2. On or about March 9, 1990, Miss Betty Beck, Deputy Administrative Chief, Office of Public Defender, Prince George's County advised Benjamin J. Woolery, Esquire, is currently an employee of the Office of the Public Defender, and has been "for two years."

3. A document from Prince George's County Office of Personnel reveals that Benjamin J. Woolery, Esquire, has a Social Security No. of 214-78-0449, and

served as a law clerk in the Circuit Court of Prince George's County from 1986 to 1988.

4. On March 9, 1990, counsel employed to represent Petitioner in the Court of Special Appeals of Maryland, Richard M. McGill, Esquire, advised for the first time, that Benjamin J. Woolery, Esquire, was and still is an employee of the Office of the Public Defender, and an employee in his office.

5. Records of the Office of the Public Defender lists Benjamin J. Woolery as an Assistant Public Defender (Ap. 7).

6. The Retainer Agreement executed by Richard M. McGill, Esquire on February 19, 1989, neither advised that Benjamin J. Woolery, Esquire would prepare the Briefs, or argue his appeal in the

Maryland Court of Special Appeals, nor that Mr. Woolery was simultaneously an Assistant Public Defender (Ap. 11).

7. Benjamin J. Woolery, Esquire acknowledged his preparation of the Statement of Facts (Ap. 16).

8. The Brief, Reply Brief and Record Extract in the Court of Special Appeals of Maryland list Richard M. McGill, Esquire, and Benjamin J. Woolery, Esquire as "Counsel for Appellant" (Ap. 17-20).

9. "Update Case Records" reflect that "Woolery, Benjamin J." argued the appeal representing Appellant in the Court of Special Appeals of Maryland (Ap. 21).

10. The undersigned was not advised of the dual capacity of Benjamin J. Woolery, Esquire, until he witnessed the

self-identification of Mr. Woolery as an Assistant Public Defender in open court of the Circuit Court of Prince George's County.

11. A May 24, 1984, letter from Councilman Amonett to Water Resources Administration shows an interest in the commercial development of the old Marlboro Raceway by the Councilman and Prince George's County Department of Public Works (Ap. 49).

12. A July 30, 1985, letter shows an intention to issue a permit by Water Resources Administration respecting Petitioner's property (Ap. 46).

13. A November 27, 1985, letter from the County Executive of Prince George's County to the Washington Suburban Commission shows an interest in Petitioner's property (Ap. 43).

14. An April 25, 1986, letter from Washington Suburban Commission shows an interest in Petitioner's property (Ap. 40).

15. A December 26, 1989, letter shows an interest in Petitioner's property by the Maryland National Capital Park and Planning Commission (Ap. 38).

16. A Summons and Petition for Condemnation of Petitioner's property was issued May 13, 1988, during pendency of Petitioner's legal battles against the County and State (Ap. 27-30).

17. A letter of June 1, 1989, by former Councilmember Amonett who wrote the May 24, 1984 interest letter, now Land Acquisition Consultant to the Maryland National Capital Park and

Planning Commission, continues to show an interest in "acquiring your property" (Ap. 24).

18. An August 1, 1989, letter from Mr. Amonett still expresses an interest "in purchasing" the "property of Atta Moshkelgosha" (Ap. 22).

19. A March 30, 1987, letter shows the original fee agreement with Gerard T. McDonough, Esquire (Ap. 35).

20. An August 4, 1987, letter shows modification of March 30, 1987, Fee Agreement, seeking to acquire an interest in Petitioner's property. (Ap. 31-35).

Atta Moshkelgosha

Atta Moshkelgosha

Prince George's County

REGISTER OF WILLS

Register: Callie M. Heffron

Chief Deputy: Elizabeth H. Leitch

Assistant Chief Deputy: Gail T. Wilkerson

Chief Auditor: Joanne L. O'Brien

COURT RELATED AGENCIES

OFFICE OF THE STATE'S ATTORNEY

State's Attorney: Alexander Williams, Jr.

Administrative Division

Criminal Trials Division

District Court Division

Domestic Violence Unit

Juvenile Division

Screening & Investigations Division

Location of the State's Attorney Offices:

Upper Marlboro: Court House, Suite 410

14735 Main St., Upper Marlboro 20772

Hyattsville: County Service Bldg., Room

218, 5012 Rhode Island Ave., Hyattsville 20718

OFFICE OF THE PUBLIC DEFENDER

15050 Buck Lane, Upper Marlboro 20772

General Information

District Public Defender: E Allen Shepherd

Deputy District Public Defender: Autry N. Noblitt

Juvenile Court Division:

Court House, Upper Marlboro 20772

Investigations Division:

15050 Buck Lane, Upper Marlboro 20772

Clayton Aarons	Bruce Marcus
Carl Buckheister	F. Anthony McCarthy
Richard Bury	James Nickelsporn
Brian Denton	Joseph Niland
Melanie Fishkind	V. Lesa Noblitt
Janet Hart	Kay L. Parris
Douglas Irminger	Nick Rattal
Leonard Kuentz	Gale Saccarelli

Maureen Lamasney
Matt Lavine
Dent Lynch
Ed Sobansky
Gary Ward
John Ward
Elvira White

Supplements:

Joan Ardery
Perry Becker
Chris Bryan
Russell Butler
Sean Cleary
Steve Cohen
Gary Courtois
Mary Crawford
Gary Davis
Joanne Brozdosk
Don Garvey
Lisa Goldfarb
Leo Green, Jr.
Charles Hall
Chris Hamlin
Mike Kaiser
Matt Lavine
Carol Lawson
Mary McGillicu
Leslie Moore
Eric Nyce
Keith Parris
Crystal Pinkney
Rosalyn Pugh
Ross & Powell
Joel Shoap
Linda Spevack
Tim Sullivan
Fran Taylor
William Ticer

Ed Hanlon

John Hanrahan

Jay Harvey

Wynee Hawk

Josephine Torn

Jeff Wennar

Howard Wilson

Ben Woolery

RETAINER AGREEMENT

This Agreement, made this 19 day of February, 1989, by and between Richard M. McGill, known herein as "Attorney", and the undersigned, Atta Moshkelgosha, known as "Client":

That in consideration of Client's promise to pay $10,000.00, as evidenced by the attached Confessed Judgment Note, Attorney is hereby retained by Client to assemble, prepare, organize, and argue an Appeal from the Circuit Court of Prince George's County, Maryland to the Court of Special Appeals in Case No. 1185 (Sept - 1988), entitled Atta Moshkelgosha v. Prince George's County, Maryland.

The above fee is fair and reasonable and represents time spent and time anticipated to be spent in the finalization and argument of said Appeal. Said fee is based also in part

on the fact that Attorney was retained approximately twelve (12) days before the final deadline for filing appellant's amended brief. Therefore, full time and attention of one Attorney for the entire twelve (12) day period was required.

It is understood and agreed that Attorney has made no guarantees regarding the successful termination of this matter, and all expressions by attorney are opinion only.

In the event additional court action is necessary, it is agreed that this retainer agreement refers only to the Appeal in the Court of Special Appeals, and specifically does not provide for an Appeal to the Court of Appeals or argument on remand to the Circuit Court for Prince George's County, Maryland.

Dated Feb. 19, 1989

/Original Signed/

Richard M. McGill, Attorney

/Original Signed/

Atta Moshkelgosha, Client

CONFESSED JUDGMENT NOTE

$10,000.00

14713 Main Street
P.O. Box 219
Upper Marlboro, MD
20772

February _____, 1989

For legal services regarding an appeal before the Court of Special Appeals of Maryland, the Undersigned promises to pay to the order of Richard M. McGill the sum of Ten Thousand ($10,000.00) Dollars at 14713 Main Street, Upper Marlboro, Maryland 20772, without interest, at the rate of Five Hundred ($500.00) Dollars per month, plus reasaonable attorney fees if placed in the hands of an attorney for collection. The first payment of $500.00 commences March 21, 1989 and will continue each and every month thereafter until said Ten Thousand ($10,000.00) Dollars is paid in full.

The Undersigned and all Endorsers, Sureties, and Guarantors hereof, hereby jointly and severally waive presentment, demand for payment, notice of dishonor, notice of protest and protest, and all other notices or demands in connection with the delivery, acceptance, performance, default, endorsement or guarantee of this instrument.

The Undersigned hereby authorizes the Clerk of any Court, of competent jurisdiction, to enter judgment by confession against him in the event this Note is not paid when due. The due date for each payment is the First Day of Every Month.

/Original Signed/

Atta Mos[illegible]elgosha

Atta, I'm in the Library. There was a problem with the printer that is fixed now but it put off my time table. I have a copy of draft w/changes in Statement of Facts if you want to come to Library.

Benjamin

BEST AVAILABLE COPY

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 1988

No. 1185

ATTA MOSHKELGOSHA ET AL

Appellants

VS.

PRINCE GEORGE'S COUNTY, MARYLAND

Appellee

Appeal from the Circuit Court

for Prince George's County, Maryland

(Honorable Robert J. Woods, presiding)

APPELLANTS' BRIEF

Respectfully Submitted,

Richard M. McGill, Esq.

Benjamin J. Woolery, Esq.

Counsel for Appellants

IN THE

COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM, 1988

NO. 1185

ATTA MOSHKELGOSHA, et al.,

Appellants,

v.

PRINCE GEORGE'S COUNTY, MARYLAND,

Appellee.

APPEAL FROM THE CIRCUIT COURT

FOR PRINCE GEORGE'S COUNTY, MARYLAND

(Honorable Robert J. Woods, Judge)

REPLY BRIEF OF APPELLANT

Richard M. McGill, Esq.

Benjamin J. Woolery, Esq.

Counsel for Appellant

14713 Main Street

P.O. Box 219

Upper Marlboro, MD 20772

(301) 627-5222

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

September Term, 1988

No. 1185

ATTA MOSHKELGOSHA ET AL

Appellants

VS.

PRINCE GEORGE'S COUNTY, MARYLAND

Appellee

Appeal from the Circuit Court

for Prince George's County, Maryland

(Honorable Robert J. Woods, presiding)

RECORD EXTRACT

Respectfully Submitted,

Richard M. McGill, Esq.

Benjamin J. Woolery, Esq.

Counsel for Appellants

Atta Moshkelgosha et al.

v.

Prince George's County, Maryland

No. 1185, Sept. Term, 1988 Date ..2/21/89

Filing Fee

Record Received...10/27/88

Lower Court.....PRINCE GEORGE'S

Admin. App.--Zoning

Appellant Brief Due.....2/21/89

Argument Date.....4/03/89

Panel.....MOYLAN JR., CHARLES E.

BLOOM, THEODORE G.

BELL, ROBERT M.

Comments:

The brief & extract was filed today

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Enter/Update Case Records          Screen 7 of 7
Appeal No.........Term 88 Type    No. 1185
Appeal Case Title..MOSHKELGOSHA V. P.G. CO.
Attorneys ---(1-Appellant,2-Appellee,3-Other)
      No. Type Arg  Represnt  Attorney Names
1-0001517  2    Y              HOPE ESQUIRE, J
2-0003195  1    N              MCGILL, RICHARD
3-0006450  1    N              MOSHKELGOSHA, A
4-0006924  1    Y              WOOLERY,BENJAMIN
5-0000000  0
6-0000000  0
7-0000000  0
8-0000000  0
9-0000000  0
10-0000000 0
        ** Blinking Numbers are in error **
        ** Press Cmd5 to Accept the Completed
          Case Record **
Command Keys- Cmd1 Previous Screen  Cmd5-
Accept Record  Cmd7-End of Job  Cmd4-Display/
Update Attorney Master File
```

THE MARYLAND-NATIONAL CAPITAL PARK

AND PLANNING COMMISSION

6600 Kenilworth Avenue, Riverdale, MD 20737

August 1, 1989

Mr. Atta Moshkelgosha

9239 Greenwood Lane

Lanham, Maryland 20706

Dear Mr. Moshkelgosha:

Re: Western Branch Stream Valley Park/
Property of Atta Moshkelgosha,
3rd Election District, Prince George's
County, Maryland, Parcel 14, Tax Map 102
Grid B-3, Liber 5374, Folio 617
(My Letter of June 1, 1989)

I enclose a copy of my letter of June 1, 1989, for your reading. The Parks Department is interested in purchasing the above referenced land for conservation purposes. I

believe a purchase by thee Parks Department would be to the betterment of all parties. You may call me at 699-2555 or 899-1598. Should I not be at the latter number, there is an answering machine for your convenience in leaving a message.

Sincerely,

/Original Signed/

William B. Amonett

Land Acquisition Consultant

Encl

/ejo

THE MARYLAND-NATIONAL CAPITAL PARK

AND PLANNING COMMISSION

6600 Kenilworth Avenue, Riverdale, MD 20737

June 1, 1989

Mr. Atta Moshkelgosha

9239 Greenwood Lane

Lanham, Maryland 20706

Dear Mr. Moshkelgosha:

Re: Western Branch Stream Valley Park/
Property of Atta Moshkelgosha
3rd Election District, Prince
George's County, Parcel 14, Tax Map
102, Grid B-3, Liber 5374, Folio 617

As you know, I have previously discussed the possibility of the Commission acquiring your property. The Commission has the responsibility of acquiring, for conservation purposes, those sensitive lands which lie

along the steam valleys. Your land falls within the framework of this policy. A good portion of your land is flood plain and needs to be protected from development in the public interest as part of the protection of the rivers and the Chesapeake Bay. All of our land acquisitions are made pursuant to independent appraisals based on actual market value of the subject. I would appreciate hearing from you at your earliest convenience.

Thank you for your consideration.

Sincerely,

/Original Signed/

William B. Amonett

Land Acquisition Consultant

WBA:ejo

PETITION, EXHIBITS, DECLARATION & FEE PD

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

NORMAN L. PRITCHETT

CLERK OF THE CIRCUIT COURT

COURTHOUSE

UPPER MARLBORO, MD 20772-9907

WRIT OF SUMMONS CASE NUMBER CAL88-07380

STATE OF MARYLAND, PRINCE GEORGE'S COUNTY TO WIT:

TO: ATTA MOSHKELGOSHA

9239 GREENWOOD LANE

LANHAM MD

YOU ARE HEREBY SUMMONED TO FILE A WRITTEN RESPONSE BY PLEADING OR MOTION IN THIS COURT TO THE ATTACHED COMPLAINT FILED BY:

WASHINGTON SUB SAN COMM

4017 HAMILTON STREET

HYATTSVILLE, MD

WITHIN 30 DAYS AFTER SERVICE OF THIS SUMMONS

UPON YOU

WITNESS THE HONORABLE ERNEST A. LOVELESS, JR., CHIEF JUDGE OF THE SEVENTH JUDICIAL CIRCUIT OF MARYLAND.

DATE ISSUED 05/13/88

TO THE PERSON SUMMONED:

1. PERSONAL ATTENDANCE IN COURT ON THE DAY NAMED IS NOT REQUIRED.
2. FAILURE TO FILE A RESPONSE WITHIN THE TIME ALLOWED MAY RESULT IN A JUDGMENT BY DEFAULT OR THE GRANTING OF THE RELIEF SOUGHT AGAINST YOU.

SHERIFF'S RETURN

FEE $ _____ SHERIFF _____

NOTE:

1. THIS SUMMONS IS EFFECTIVE FOR SERVICE ONLY IF SERVED WITHIN 60 DAYS AFTER THE DATE IT IS ISSUED.

2. PROOF OF SERVICE SHALL SET OUT THE NAME OF THE PERSON SERVED, DATE AND THE PARTICULAR PLACE AND MANNER OF SERVICE. IF SERVICE IS NOT MADE, PLEASE STATE THE REASONS.

3. RETURN OF SERVED OR UNSERVED PROCESS SHALL BE MADE PROMPTLY AND IN ACCORDANCE WITH RULE 2-126.

4. IF THIS SUMMONS IS SERVED BY PRIVATE PROCESS, PROCESS SERVER SHALL FILE A SEPARATE AFFIDAVIT AS REQUIRED BY RULE 2-126(A).

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

WASHINGTON SUBURBAN	:	
SANITARY COMMISSION	:	
4017 Hamilton Street	:	
Hyattsville, Maryland	:	
Plaintiff	:	
v.	:	Case No. CAL88-
ATTA MOSHKELGOSHA	:	07380
9239 Greenwood Lane	:	
Lanham, Maryland	:	
and	:	
MORTAZA SHOLOUGH	:	
Address Unknown	:	
and	:	
JAMES H. BERKELEY, TRUSTEE	:	
10601 Baltimore Boulevard	:	
Beltsville, Maryland	:	
Defendants		

PETITION FOR CONDEMNATION

TO THE HONORABLE, THE JUDGES OF SAID COURT:

Petitioner, Washington Suburban Sanitary Commission, by its attorney, respectfully shows as follows:

1. Petitioner is an agency of the State of Maryland, organized and existing under the laws of the State of Maryland, engaged in performing the governmental function, within the boundaries of the Washington Suburban Sanitary District in Montgomery and Prince George's Counties, Maryland, of furnishing the inhabitants of said District with water, sewer and other services.

Law Offices

ZANECKI, LALLY & MCDONOUGH

One Metro Center

3100 Professional Place, Suite 113

Landover, Maryland 20785

(301) 459-9393

FAX (301) 459-8720

August 4, 1987

Mr. Atta Moshkelgosha

c/o ALM Mechanical Contractors

6000 SE Crain Highway

Upper Marlboro, Maryland 20772

RE: Modification of March 30, 1987 Fee Agreement

Dear Mr. Moshkelgosha:

Pursuant to our discussions subsequent to our last fee agreement, dated March 30, 1987, for legal services to be performed in

conjunction with the Old Marlboro Raceway site which is presently the subject of an ongoing Zoning Appeal in the Circuit Court (Case No. CAL-87-06120), we agree to modify the scope of legal services and fees as outlined below. Your signature on the acceptance line below will signify your acceptance of and agreement to this modification.

The legal services to be provided by our firm will continue to include the prosecution of the existing appeal to a decision by the Circuit Court. Our service under this modification shall be expanded to include, prosecuting further appeals of any adverse decision of the Circuit Court up to and including the Court of Appeals; argument of the zoning case before the District Council on remand, if any; investigation and prosecution of a Petition for Inverse

Condemnation, Mandamus or other equitable relief against the County or State, but not County or State officials as individuals; and/or pursuit of sale or settlement negotiations with any relevant governmental agency or any other party, public or private.

The legal fee arrangement shall be modified as follows: The non-refundable retainer of $2,500.00 of which our firm is in receipt pursuant to the March 30, 1987 argument shall be applied as our retainer concerning all the above legal services. The additional $2,500.00 payment due prior to argument of CAL 87-06120 before the Circuit Court shall be eliminated. Our firm shall be entitled to a contingency fee of thirty-three and one third percent (33 1/3%) of any monetary award or proceeds of sale arising out of any transaction on the subject property subsequent to the date of this

argument. If a rezoning is achieved and no transaction or transfer for consideration of the subject porperty takes place, then our firm shall be entitled to a thirty-three and one third percent (33 1/3%) equitable interest in the subject property and the client hereby agrees to execute such further documents or assurances as may be necessary to evidence and/or secure the above equitable interest.

Sincerely,

/Original Signed/

Gerard T. McDonough

ACCEPTED:

NEVER SIGNED

Atta Moshkelgosha

NEVER SIGNED

Mortaza Sholough

GTM/slm

Law Offices

ZANECKI, LALLY & MCDONOUGH

One Metro Center

8100 Professional Place, Suite 113

Landover, Maryland 20785

(301) 459-9393

FAX (301) 459-8720

March 30, 1987

Mr. Atta Moshkelgosha

A.L.M. Mechanical Contractors

6000 S.E. Crain Highway

Upper Marlboro, Maryland 20772

Re: Fee agreement, Marlboro C-S-C Zoning Appeal

Dear Mr. Moshkelgosha:

The following constitutes our agreement as to legal services to be provided by our firm and fees to be paid by you, as our client,

for legal services.

The scope of services shall consist of all research and filing necessary pleadings, motions, briefs, and other documents necessary to prosecute a B-Rule Zoning Appeal in the Circuit Court. It will also include appearance and argument of your appeal in the Circuit Court. This scope service specifically does not include appeal of any adverse decision of the Circuit Court to any higher Court nor reargument of the zoning case before the District Council pursuant to any remand. The firm agrees that the above Appeal shall be filed in the Circuit Court prior to April 16, 1987.

As client, you agree to pay a fee of $5,000.00 for the above legal services. $2,500.00 of which shall accompany a copy of this letter accepted by you as a retainer. $2,500.00 of which shall be due in 90 days

from the date of this letter.

Sincerely,

/Original Signed/

Gerard T. McDonough

ACCEPTED:

/Original Signed/

Atta Moshkelgosha

GTM/slm

The Maryland-National Capital Park
and Planning Commission
6600 Kenilworth Avenue, Riverdale, MD 20737
December 26, 1986

Mr. Atta Moshkelgosha
9239 Greenwood Lane
Lanham, Maryland 20706

Dear Mr. Moshkelgosha:

REF: Patuxent River Watershed Park/
Property of Atta Moshkelgosha
Parcel 14, Tax Map 102, Grid B-3,
Liber 5374, Folio 617
42.14+ acres - all in 100-year
floodplain

The Maryland-National Capital Park and Planning Commission is continuing its efforts to acquire available parcels of land bordering the Patuxent River and major tributaries as part of the Patuxent River

Watershed Park.

As shown on the attached plat, our records show that you own approximately 42 acres fronting on Route 301 which borders Western Branch tributary. This parcel also adjoins existing Commission parkland bordering your property along its southern boundary.

I would appreciate knowing if you are interested in selling this property to this Commission for public park purposes. Should you have any questions or wish to discuss this matter, please feel free to contact me at 699-2525.

Sincerely,

/Original Signed/

Robert M. Arciprete

Chief, Planning, Design and Research Division

Enclosure

RMA:fab

Washington Suburban Sanitary Commission

Department of Engineering

8103 Sandy Spring Road, Laurel, MD 20707

April 25, 1986

Mr. Atta Moshkelgosha

9239 Greenwood Lane

Lanham, MD 20801

Re: Western Branch Access Road

Contract No. 86CD6895-A

Dear Mr. Moshkelgosha:

Recently you received a letter from WSSC indicating that survey work would be performed in your area. This work has been completed, but I want to take the opportunity to clarify the intent of this project, the Westen Branch Access Road. Please refer to the attached map to locate your property with respect to this project.

The nearby Western Branch Wastewater

Treatment Plant access road intersects Route 301. Since the State Highway Administration removed the temporary crossover at this intersection, access to the plant is limited to those vehicles traveling North Bound. To avoid dangerous U-turns, a crossover is required. Since SHA limts the number of median crossovers, the Commission must use an existing one, opposite the Marlboro Square Shopping Center entrance. Therefore, a new road is needed to connect to the existing plant access road, as the map indicates.

Attached please find a copy of the letter from the County Executive which indicates his approval of the project. Your cooperation with WSSC in this matter is therefore requested. Further discussions will be necessary as the plan details are finalized and the land requirements confirmed.

Please contact me if you have any

questions, I may be reached at 441-4182 between 8:30 A.M. and 5:15 P.M. Monday-Friday. Your interest and cooperation in this endeavor will be greatly appreciated.

Sincererly,

/Original Signed/

Jennifer L. Miller

Project Manager

Project Management

Section #1

JLM/dw

Enclosures

cc: P.G. County Executive Office

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The Prince George's County Government

(301) 952-4131

County Executive

November 27, 1985

Mr. Richard G. Hocevar

Acting General Manager

Washington Suburban Sanitary Commission

4017 Hamilton Street

Hyattsville, Maryland 20781

Re: Western Branch Access Road

Contract No. 81CD5141-D

Dear Dick:

This is a follow-up to my letter to you dated September 18, 1985, regarding the proposed permanent access road to the existing Western Branch Treatment Plant. Additional information has been brought to my attention concerning the proposed access road, including the estimated cost of construction and the highway safety issues.

On the basis of this information, I have concluded that there is more than adequate justification for the permanent access road.

The access road will use the existing crossover at the Marlboro Raceway. The Commission will acquire a right-of-way from the crossover along the east side of Route 301 to the existing Western Branch STP access road. The total cost of the project will be less than $200,000 including the cost of the right-of-way. Since this access road will allow trucks to deliver hazardous materials to the plant without making a U-turn on Route 301, the project is very desirable. This is especially true in light of the methanol deliveries which will be required when the denitrification units are constructed.

The Commission should, therefore, proceed with the construction of the access road beginning at the existing U.S. Route 301

median crossover opposite the old Marlboro Raceway. Should further assistance be required, please let me know. In the meantime, I would appreciate it if you can keep me informed of the status of this matter.

Sincerely,

/Original Signed/

Parris N. Glendening

County Executive

State of Maryland

Department of Natural Resources

Water Resources Administration

Tawes State Office Building

Annapolis, Maryland 21401

July 30, 1985

Mr. Atta Moshkelgosha

6000 South East Crain Highway

Upper Marlboro, MD 20772

Re: WRA File No. 84-WC-0381
Placement of fill material and construction of a secondary channel landscaped as a wetland within the 100 year flood plain limits of Western Branch at Old Marlboro Raceway in Prince George's County

Dear Mr. Moshkelgosha:

The Administration has completed the

review of your application for a Waterway Construction Permit. As a result of the review, the Administration intends to issue Waterway Construction Permit No. 84-WC-0381. However, a copy of the approved Soil and Erosion Control Plans is required prior to issuance of the permit.

In addition to the standard administrative conditions of the permit, the following special conditions shall apply:

1. A detailed topographical map of the site accurately delineating the limits of the 100 year floodplain of Western Branch must be submitted.
2. A certification satisfying the Prince George's County land use and zoning requirements must also be submitted.
3. Due to Class I classification of Western Branch and its habitat for 24 species of estuarine fish, such as alewife, blueback herring, and the semi-andromous

white and yellow perch, no in-stream construction is allowed from March through June, 15, inclusive.

4. Submission of the landscape plan for creation of 10 acres of wetland required by the Fisheries Division is also a must requirement.

Sincerely,

/Original Signed/

Charles K. Cover, Chief

Waterway Permits Division

MQT:gm

cc: David Henderson, Ben Dyer Assoc., Inc.

Prince George's County Council
County Administration Building
Upper Marlboro, Maryland 20772

May 24, 1984

James W. Peck, Director
Water Resources Administration
Maryland Department of Natural Resources
Tawes State Office Building, Room D-2
Annapolis, Maryland 21401

Re: Marlboro Raceway
WRA File #84-WC-0381

Dear Mr. Peck:

For many years, the old Marlboro Raceway (automobile racing) has been abandoned. The buildings have deteriorated and are an eyesore.

It is my understanding that Mr. Atta Moshkelgosha through his engineers, Ben Dyer Associates, Inc., is attempting to develop this property. It is my understanding that Mr. David Murray, of Ben Dyer Associates, has

BEST AVAILA

submitted a plan and stands ready to amend or alter the plan in any way so as to make the development proposal environmentally sound. It is my understanding that the Prince Geroge's County Department of Public Works and Transportation is generally in favor of this project. I would call your attention to the attached letter.

A modern development at this site would certainly be beneficial to the area. The old raceway lies within the boundaries of my Councilmanic District.

I will appreciate your positive efforts in assisting Mr. Moshkelgosha and Ben Dyer Associates in achieving their goals. Thank you for showing interest and for giving any needed assistance to this problem.

Sincerely,

/Original Signed/

William B. Amonett

Councilman, 9th District

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PRINCE GEORGE'S COUNTY
OFFICE OF PERSONNEL

214-78-0449

Benjamin J. Woolery

Circuit Court Law Clerk

11-3-86 to 7-8-88